

## DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☐ SUPERSEDING

## OFFENSE CHARGED

26 U.S.C. § 7206(2) - Preparation/  
Assisting in Filing False Returns

☐ Petty  
☐ Minor  
☐ Misdemeanor  
☒ Felony

## PENALTY:

26 U.S.C. § 7206(2)- 3 years prison, \$250,000 fine, 1 year supervised release, \$100 assessment

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

2013 JUL 25 P 1:13

BRIAN KENNY

RICHARD L. WIERING  
CLERK, U.S. DISTRICT COURT

DISTRICT COURT NUMBER

CR 13 495

## DEFENDANT

## IS NOT IN CUSTODY

- 1) ☒ Has not been arrested, pending outcome this proceeding.  
 If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☐ Is on Bail or Release from (show District)

## IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer  
been filed?

☐ Yes  
☒ No

If "Yes"  
give date  
filed

DATE OF  
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED  
TO U.S. CUSTODY

☐ This report amends AO 257 previously submitted

## PROCEEDING

Name of Complainant Agency, or Person (&amp; Title, if any)

INTERNAL REVENUE SERVICE

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW DOCKET NO.

MAGISTRATE CASE NO.

Name and Office of Person

Furnishing Information on MELINDA HAAG  
THIS FORM

☒ U.S. Att'y ☐ Other U.S. Agency

Name of Asst. U.S. Att'y  
(if assigned)

CYNTHIA L. STIER, AUSA

## ADDITIONAL INFORMATION OR COMMENTS

## PROCESS:

☐ SUMMONS ☒ NO PROCESS\*

☐ WARRANT Bail Amount: \_\_\_\_\_

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: \_\_\_\_\_

\*Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_

Before Judge: \_\_\_\_\_

Comments: \_\_\_\_\_

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED

2013 JUL 25 P 1:13

RICHARD D. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

WHA

v.

UNDER SEAL

CR

13

495

BRIAN KENNY,

DEFENDANT(S).

## INDICTMENT

26 U.S.C. § 7206(2) - Preparation/Assisting in Filing False Returns

A true bill.

*Nancy J. Peterson*  
Foreman

Filed in open court this 25<sup>th</sup> day of

*July 2013*

*John M. [Signature]*  
Clerk

Bail, \$

*no proem*

JOSEPH C. SPERO

MELINDA HAAG (CABN 132612)  
United States Attorney

FILED

2013 JUL 25 P 1:13

RICHARD A. WICKING  
CLERK OF DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNDERSEAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

WHA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

CR No. 13 495

Plaintiff,

v.

BRIAN KENNY,

Defendant.

VIOLATIONS: 26 U.S.C. § 7206(2)-  
Preparation/Assisting in Filing  
False Returns;

SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

COUNT ONE: (26 U.S.C. § 7206(2)) - Preparation/Assisting in Filing False Tax Return

On or about March 15, 2007, in the Northern District of California, the defendant.

BRIAN KENNY,

a resident of San Francisco, California, did willfully aid and assist in, and procure, counsel, and advise the preparation and presentation to the Internal Revenue Service of the U.S. Income Tax Return for an S Corporation, Form 1120S, for SF Bay Construction Inc. for the calendar year 2006. The return was false and fraudulent as to a material matter, in that it reported \$839,608 in gross receipts for SF Bay Construction, Inc. on line 1(a), whereas, as he then and there knew, the gross receipts for SF Bay Construction Inc. were well in excess of that stated thereon.

All in violation of Title 26, United States Code, Section 7206(2).

INDICTMENT

1  
2 COUNT TWO: (26 U.S.C. § 7206(2)) - Preparation/Assisting in Filing False Tax Return

3 On or about August 22, 2007, in the Northern District of California, the defendant,  
4 BRIAN KENNY,  
5 a resident of San Francisco, California, did willfully aid and assist in, and procure, counsel, and  
6 advise the preparation and presentation to the Internal Revenue Service of his Joint U.S.  
7 Individual Income Tax Return for the calendar year 2006. The return was false and fraudulent as  
8 to a material matter in that it reported - \$15,428 on line 17 as income from "rental real estate,  
9 royalties, partnerships, S corporations, trusts, etc." whereas, as he then and there knew, the  
10 income from "rental real estate, royalties, partnerships, S corporations, trusts, etc." was in excess  
11 of that stated thereon.

12 All in violation of Title 26, United States Code, Section 7206(2).

13 COUNT THREE: (26 U.S.C. § 7206(2)) - Preparation/Assisting in Filing False Tax Return

14 On or about September 13, 2008, in the Northern District of California, the defendant,  
15 BRIAN KENNY,  
16 a resident of San Francisco, California, did willfully aid and assist in, and procure, counsel, and  
17 advise the preparation and presentation to the Internal Revenue Service of the U.S. Income Tax  
18 Return for an S Corporation, Form 1120S, for SF Bay Construction Inc. for the calendar year  
19 2007. The return was false and fraudulent as to a material matter, in that it reported \$1,697,710  
20 in gross receipts for SF Bay Construction on line 1(a), whereas, as he then and there knew, the  
21 gross receipts for SF Bay Construction were well in excess of that stated thereon.

22 All in violation of Title 26, United States Code, Section 7206(2).

23 COUNT FOUR: (26 U.S.C. § 7206(2)) - Preparation/Assisting in Filing False Tax Return

24 On or about October 15, 2008, in the Northern District of California, the defendant,  
25 BRIAN KENNY,  
26 a resident of San Francisco, California, did willfully aid and assist in, and procure, counsel, and  
27 advise the preparation and presentation to the Internal Revenue Service of his Joint U.S.  
28 Individual Income Tax Return for the calendar year 2007. The return was false and fraudulent as

1 to a material matter in that it reported \$385,182 on line 17 as income from "rental real estate,  
2 royalties, partnerships, S corporations, trusts, etc." whereas, as he then and there knew, the  
3 income from "rental real estate, royalties, partnerships, S corporations, trusts, etc." was in excess  
4 of that stated thereon.

5 All in violation of Title 26, United States Code, Section 7206(2).

6 COUNT FIVE: (26 U.S.C. § 7206(2)) - Preparation/Assisting in Filing False Tax Return

7 On or about November 12, 2007, in the Northern District of California, the  
8 defendant,

9 BRIAN KENNY,

10 a resident of San Francisco, California, did willfully aid and assist in, and procure, counsel, and  
11 advise the preparation and presentation to the Internal Revenue Service an Employer's Quarterly  
12 Federal Tax Return [Form 941] for SF Bay Construction, Inc. for the tax quarter ended  
13 September 30, 2007. That return was false and fraudulent as to a material matter, in that it  
14 reported \$10,000 in wages, tips and other compensation on line 2, whereas, as he then and there  
15 knew, the wages, tips and other compensation paid by SF Bay Construction, Inc. was well in  
16 excess of that stated thereon.

17 All in violation of Title 26, United States Code, Section 7206(2).

18 COUNT SIX: (26 U.S.C. § 7206(2)) - Preparation/Assisting in Filing False Tax Return

19 On or about February 18, 2008, in the Northern District of California, the  
20 defendant,

21 BRIAN KENNY.

22 a resident of San Francisco, California, did willfully aid and assist in, and procure, counsel, and  
23 advise the preparation and presentation to the Internal Revenue Service an Employer's Quarterly

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26 //

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28 //

1 Federal Tax Return [Form 941] for SF Bay Construction, Inc. for the tax quarter ended  
2 December 31, 2007. That return was false and fraudulent as to a material matter, in that it  
3 reported \$20,000 in wages, tips and other compensation on line 2, whereas, as he then and there  
4 knew, the wages, tips and other compensation paid by SF Bay Construction, Inc. was well in  
5 excess of that stated thereon.

6 All in violation of Title 26, United States Code, Section 7206(2).

7  
8 A True Bill

9  
10 Dated: 7/25/2013

11 Nancy J. Peterson  
FOREPERSON

12 MELINDA HAAG  
13 United States Attorney

14 J. Douglas Wilson  
15 J. DOUGLAS WILSON  
16 Chief, Criminal Division

17 Approved as to Form

18  
19 Cynthia Stier  
20 CYNTHIA STIER  
21 Assistant United States Attorney  
22 Tax Division  
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United States District Court  
Northern District of California

FILED

2013 JUL 25 P 1:13

CRIMINAL COVER SHEET

EDWARD W. WINNING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**Instructions:** Effective January 3, 2012, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case. Please place this form on top of the Defendant Information Form.

Case Name:

USA v. BRIAN KENNY

CR

Case Number:

13

495

WHA

Total Number of Defendants:

1 ☒

2-7 ☐

8 or more ☐

Is This Case Under Seal?

Yes ☐

No ☒

Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?

Yes ☐

No ☒

Venue (Per Crim. L.R. 18-1):

SF ☒ OAK ☐ SJ ☐

Is this a death-penalty-eligible RICO Act gang case?

Yes ☐

No ☒

Assigned AUSA (Lead Attorney):

CYNTHIA L. STIER, AUSA

Comments:

Date Submitted:

7/25/13